

# OFFICE OF THE ATTORNEY GENERAL

83-00196



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Honorable Roy McDowell  
Sheriff, Etowah County  
Etowah County Courthouse  
Gadsden, Alabama 35901

Sheriffs - Counties -  
Employees, Employers,  
Employment.

Sheriff of Etowah County has  
the authority to hire deputies.  
When dismissing deputies Act  
No. 203, 1971 Regular Legisla-  
tive Session must be followed.

Dear Sheriff McDowell:

Reference is made to your request for an opinion from  
the Attorney General regarding the authority of the Sheriff  
of Etowah County to appoint, suspend and fire deputies.

The facts initiating your request are as follows:

"As of October, 1981, the County  
Commission has required my department  
to submit to them a request to hire  
personnel and in turn they would have  
the county planner accept applications  
in his office. He would grade said  
applications and then send the top  
five applicants to my office for  
further review. With this system I am  
restricted to only the applications  
that the county planner or county  
commission will send, not all  
applications, but a limited few. At  
this point I must make a request to

Honorable Roy McDowell  
Sheriff, Etowah County  
Page Two

hire from this list, subject to review by the county planner and with approval of the County Commission. My Office is more capable to grading applications for jobs within my department. The Applications should come to my department so that I, may make a decision as to who will make a good officer to stand in the stead of the Sheriff."

You then posed the following question:

"With the question of "Hiring Authority" in mind do you find any local laws or general laws of local applications regarding employment of Deputies or other Sheriff's Department Personnel in Etowah County that would give the authority to appoint, hire or fire to anyone other than the Sheriff."

My research reveals that there are no local laws, general laws of local application or general laws that provide for the appointment of deputy sheriffs in Etowah County. However, Act No. 203 of the 1971 Regular Legislative Session provides for the dismissal of the sheriff's deputies.

Regarding the appointment of deputy sheriffs the Attorney General concluded in Opinions to the Honorable E. Ted Taylor of Prattville dated June 7, 1978, to the Honorable Melvin Stephens, Sheriff of Sumter County dated September 27, 1979, and to the Honorable George Allen Desmond, Chairman of the Bibb County Commission dated February 5, 1982, that in the absence of any statutory authority providing for the appointment of deputy sheriffs, a sheriff has the common law authority to appoint deputies. The opinions based this conclusion on an early Alabama Supreme Court case McGhee v. Eastis, 3 Stew. 307 (1831) and on Section 138 of the Constitution of Alabama, 1901 which makes a sheriff liable for the acts of his deputies.

Honorable Roy McDowell  
Sheriff, Etowah County  
Page Three

Therefore, because there are no statutes providing for the appointment of deputy sheriffs in Etowah County, the Sheriff has the common-law authority to make such appointments.

Furthermore, it was concluded in an opinion of the Attorney General to the Honorable Jack Floyd, Etowah County Attorney dated July 16, 1982, sheriff deputies are among those employees identified as "Unclassified" in the Handbook for Etowah County Employees. "Unclassified" employees are defined in the Employees Handbook as "Salaried employees who serve at the pleasure of elected officials." This reinforces the conclusion that the Sheriff of Etowah County has full power to appoint deputy sheriffs.

The dismissal of deputy sheriffs in Etowah County is governed by Act No. 203 of the 1971 Regular Legislative Session which provides that no full-time employee of Etowah County or the Etowah County Board of Education shall be dismissed from employment except for certain causes. It also establishes the Etowah County Personnel Board and provides for a right of review by any dismissed employee. Therefore, when a deputy is dismissed by the sheriff the procedure set out in Act No. 203 must be followed.

I hope that your question has been sufficiently answered.

Sincerely,

CHARLES A. GRADDICK  
Attorney General

By:

  
LYNDA F. KNIGHT  
Assistant Attorney General

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